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8 NOV 1977

MEMORANDUM FOR: General Counsel

FROM: Robert W. Gambino
Director of Security

SUBJECT: Review of "Intelligence Activities and
Individual Rights" Draft

1. This Office has reviewed, in the limited time afforded it, the Draft entitled "Intelligence Activities and Individual Rights." There are certain concerns and questions which have become evident from this review and these are detailed in the commentaries which are provided in the subsequent paragraphs.

a. Page 14, (c)(5) No alien lawfully admitted for permanent resident (as defined in section 101(a)(20) of the Immigration and Nationality Act) who has applied for United States citizenship may be recruited as a covert human source by an entity of the Intelligence Community of the United States.

Comment: While this Office fully understands the intent of (5), there are definite questions presented regarding its applicability to necessary defector handling, defector debriefings, etc. This Office believes that these questions must be clarified.

b. Page 15, (c)(1) Personally identifiable information about a United States person shall be sealed within seven years, unless such information is evidence of a specific act in violation of law or appears on its face necessary to another authorized national foreign intelligence or foreign counterintelligence activity.

Comment: This Office questions the prudence of "sealing" such information as mentioned in this section and elsewhere, and wonders why "seven years" is the chosen period of time. Elsewhere it is stated that material can be unsealed for compelling reasons. This Office desires a precise defining of those "compelling reasons."

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c. Page 15, section 206(d)(1) Information about a United States person may be used or disseminated (followed by nine conditions).

Comment: A literal interpretation of provisions (A) through (J) would seriously limit our use of the National Agency check as an investigative tool. It would appear that this Office could conduct no checks without permission of the person concerned. This would eliminate our support to DDO in the processing of Operational Approvals. The entire section appears to be in contradiction with other provisions of the draft, and without clarification is confusing to the point that this Office can only suggest a complete revision to specify legal intent.

d. Page 19, section 207(g) No entity of the Intelligence Community may employ a false identification or other "pretext" technique to conceal from a United States person the government affiliation of an employee or contractor of the Intelligence Community, except under regulations promulgated by the Director with the approval of the Attorney General.

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of the Intelligence Community. This Office wishes to note that portion which states that these arrangements can be approved under regulations promulgated by the Director with the approval of the Attorney General and to strongly urge that immediate action be taken to effect such approval.

2. This Office also reserves full acceptance of all other portions and sections because of the limited time available for review. It is the position here that there could be some very critical, hidden problems in this draft.

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for Robert W. Gambino.

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Comment: While this Office fully understands the intent of (5), there are definite questions presented regarding its applicability to necessary defector handling, defector debriefings, etc. This Office believes that these questions must be clarified.

b. Page 15, (b)(2) No personally identifiable information about the political beliefs or associations, or private lives, of United States persons shall be maintained, except such information as is clearly necessary for an authorized national foreign intelligence or foreign counterintelligence activity.

Comment: This Office assumes that the political beliefs or associations do not preclude the maintenance of records regarding individuals who belong, or have belonged, to the Communist Party, the Weathermen, Students

for a Democratic Society and similar type organizations. If such information is precluded, then the efficacy of this Agency's clearance process is in grave jeopardy.

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INTELLIGENCE ACTIVITIES
AND INDIVIDUAL RIGHTS

SHORT TITLE

Sec. 201. This title may be cited as the "Intelligence Activities and Individual Rights Act of 1977."

STATEMENT OF PURPOSES

Sec. 202. It is the purpose of this Act --

- (1) to insure that the intelligence activities of the United States do not infringe upon or violate rights protected by the Constitution or laws of the United States;
- (2) to establish standards and procedures for intelligence activities affecting the rights of United States persons;
- (3) to provide fair and effective safeguards against intelligence activities which may violate rights protected by the Constitution or laws of the United States.

DEFINITIONS

Sec. 203. (a) Except as otherwise provided in this section, the definitions in Title I, the National Foreign Intelligence Act of 1977, shall apply to this title.

(b) As used in this title --

(1) The term "agent of a foreign power" means --

(A) Any person who --

(i) knowingly engages in clandestine intelligence activities for or on behalf of a foreign power, which activities involve or will involve a violation of the criminal statutes of the United States;

(ii) knowingly engages in activities that involve or will involve sabotage or terrorism for or on behalf of a foreign power;

(iii) conspires with or knowingly aids or abets any person, knowing that such person is engaged in activities described in subsections (B)(i)-(ii) above in the activities specified therein; or

(iv) pursuant to the direction of an intelligence service or intelligence network of a foreign power, knowingly collects or transmits information or material to an intelligence service or intelligence network of a foreign power in a manner intended to conceal the nature of such information or material or the fact of such transmission or collection, under circumstances which indicate the transmission of such information or material would be harmful to the security of the United States, or that lack of knowledge by the United States of such collection or transmission would be harmful to the security of the United States.

(B) Any organization substantially directed and controlled by persons engaged in the activities specified in subsections (B)(i)-(iv).

(2) The term "covert human source" means an undercover agent or human source of information who is secretly paid or otherwise directly controlled by an entity of the Intelligence Community of the United States.

(3) The term "covert investigative technique" means --

(A) review of bank, credit, and telephone records;

(B) review of medical and social history records and of confidential records of private institutions and of Federal, State, local, and foreign government agencies (other than intelligence or law enforcement agencies);

(C) review of tax returns and tax-related information, pursuant to the provisions of section 6103 of the Internal Revenue Code;

(D) electronic surveillance where at least one party to the communication has given prior consent to the interception of the communication; and

(E) the inspection of the exterior of first class mail, as defined in Title 39, United States Code, section 4251(a), before such mail is delivered to the person to whom it is addressed.

(4) The term "delegate of the Attorney General" means an Assistant Attorney General or an employee of the Department of Justice who works in the office of the Attorney General and who is designated by the Attorney General to carry out a duty otherwise assigned to the Attorney General.

(5) The term "foreign power" means --

(A) a foreign government or any component thereof, whether or not recognized by the United States;

(B) a faction of a foreign nation or nations, not substantially composed of United States persons;

(C) a commercial entity which is directed and controlled by a foreign government or governments;

(D) a foreign-based terrorist group; or

(E) a foreign-based political organization, not substantially composed of United States persons.

(6) The term "name check" means the retrieval of information already in the possession of a Federal, State, local, or foreign intelligence or law enforcement agency.

(7) The term "overt investigative technique" means the collection of information readily available from public sources, or available to a private person, including interviews of the subject or his friends or associates.

(8) The term "physical and photographic surveillance" means observation to acquire information, whether or not requiring the use of a surveillance device, under circumstances in which a warrant would not be required for law enforcement purposes.

(9) The term "reasonable suspicion" means specific and articulable facts which, taken together with rational inferences from those facts, support a finding.

(10) The term "records reviews" means review of any records of private institutions and of Federal, State, local, and foreign government agencies (other than intelligence or law enforcement agencies) which are not confidential.

(11) The term "sabotage" means activities which would be prohibited by Title 18, United States Code, chapter 105, if committed against the United States.

(12) The term "to seal" means to retain information which identifies a particular person and entries in a general name index, but to restrict access to such information and entries to compelling circumstances.

(13) The term "target" means --

(A) a person who is, or is likely to become, the object of a recruitment effort by an agent of a foreign power;

(B) information, property, or activities in the United States which are or are likely to become the object of terrorism, sabotage, or clandestine intelligence activity by an agent of a foreign power.

(14) The term "terrorism" means activities which --

(A) are violent acts or acts dangerous to human life which would be criminal under the laws of the United States or of any State if committed within its jurisdiction; and

(B) appear to be intended --

(i) to intimidate or coerce the civilian population,

(ii) to influence the policy of a government by intimidation or coercion, or

(iii) to affect the conduct of a government by assassination or kidnapping.

(15) The term "United States" when used in a geographic sense means all areas under the territorial sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(16) The term "United States person" means --

- (A) a citizen of the United States;
- (B) an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);
- (C) an organization substantially composed of citizens of the United States or aliens lawfully admitted for permanent residence.

FOREIGN COUNTERINTELLIGENCE ACTIVITIES

Sec. 204(a)(1). Foreign counterintelligence activities authorized under Title I may be directed against United States persons only in accordance with the provisions of this section.

(2) Foreign counterintelligence activities directed against United States persons shall include --

(A) the conduct of foreign counterintelligence investigations within the United States to detect sabotage, terrorism, or clandestine intelligence activities by an agent of a foreign power;

(B) the conduct of inquiries within the United States regarding targets of an agent of a foreign power;

(C) the conduct of inquiries within the United States regarding persons who are being considered as sources of assistance in the conduct of foreign counterintelligence investigations;

(D) the intentional collection of information outside the United States relating to the detection of sabotage, terrorism, or clandestine intelligence activities by an agent of a foreign power and relating to the protection of national security information from disclosure to a foreign power.

(3) No agency of the Intelligence Community shall under any circumstances initiate foreign counterintelligence activities solely upon information that a United States person is engaging in activities protected by the First Amendment to the Constitution of the United States;

(4) If any official or employee of an agency of the Intelligence Community has any reason to believe that foreign counterintelligence activities may be initiated in violation of the requirements of paragraph (3), he shall bring the activities to the attention of the Attorney General or his delegate for review and authorization on the basis of a written finding by

the Attorney General or his delegate that the requirements of paragraph (3) are satisfied.

(b)(1) A foreign counterintelligence investigation directed against a United States person within the United States may be initiated only in accordance with the provisions of this subsection.

(2) A preliminary foreign counterintelligence investigation may only be initiated upon a specific and credible allegation or specific and credible information that a United States person is, or may be, an agent of a foreign power. A preliminary investigation of a United States person shall be terminated not later than 120 days after the date of initiation, unless the Attorney General or his delegate makes a written finding that further investigation is justified on the basis of facts or information obtained during the investigation. Such further investigations may not exceed ninety days.

(3) A full foreign counterintelligence investigation may only be initiated upon reasonable suspicion that a United States person is an agent of a foreign power. A full investigation of a United States person shall be initiated only with the prior written approval of the Attorney General or his delegate. Such an investigation shall be terminated not later than one year after the date of initiation, unless the Attorney General or his delegate makes a written finding that there is probable cause to believe that the person is an agent of a foreign power or that the person's activities pose a substantial likelihood of harm to the security of the United States. Full investigations which continue beyond one year shall be reviewed at least annually by the Attorney General or his delegate to determine whether the requirements for continued investigation are still met.

(c)(1). A preliminary foreign counterintelligence investigation may involve, when necessary for the investigation, the use of --

- (A) overt techniques and name checks;
- (B) physical and photographic surveillance;
- (C) record reviews; and
- (D) inquiry of previously established covert human source

(2) Except as provided in paragraphs (3) and (4), a full foreign counterintelligence investigation under this section may involve, when necessary for the investigation, the use of --

(A) techniques authorized for preliminary investigations in paragraph (1) above;

- (B) targeting of covert human sources;
- (C) covert investigative techniques;
- (D) electronic surveillance, as defined in Title the Foreign Intelligence Surveillance Act, and in accordance with the standards and procedures of that Act; |

(3) Where the subject of a foreign counterintelligence investigation joins or participates in the activities of an organization which is not a foreign power, the investigation shall be limited to determining and reporting activities of the subject. The investigation shall exclude the normal activities of the organization, other than efforts of the subject to influence or control the organization. Covert human sources may not join or participate in the activities of the organization without the prior approval of the Attorney General or his delegate.

(d)(1). A limited ninety-day inquiry may be conducted regarding a United States person who is the target of an agent of a foreign power, provided that --

(A) the inquiry is necessary to identify the target and to determine the probable nature of the agent's interest in the target; and

(B) the techniques used in the inquiry are limited to name checks, such physical surveillance as is necessary for identifying the target, and such interviews as are necessary for determining the probable nature of the agent's interest

in the target, provided that such interviews are conducted in such a manner as to minimize any adverse effects on the target.

(2) A limited ninety-day inquiry may be conducted regarding a United States person being considered as a potential source of assistance in the conduct of an authorized foreign counterintelligence investigation, provided that --

(A) there is a bona fide expectation that the person will be used as a source of assistance in the conduct of such an investigation; and

(B) the techniques used in the inquiry are limited to name checks and such interviews as are necessary to determine the fitness of the person for use as a source of assistance in the conduct of such an investigation, provided that such interviews are conducted in such a manner as to minimize any adverse effects on the person.

(f)(1). The intentional collection of information for foreign counterintelligence purposes outside the United States concerning United States persons shall be limited to:

(A) information concerning United States persons who reside abroad and are officers or employees of a foreign power;

(B) information which is evidence that a United States person may be an agent of a foreign power;

(C) information which is evidence that a United States person may be a target of intelligence activities of a foreign power;

(D) information concerning a United States person who may be a source of assistance in the conduct of properly authorized foreign counterintelligence activities.

(E) information which evidences or concerns a possible threat to the physical safety of any person;

(F) information which is evidence that a United States person is engaged in the unauthorized disclosure

of properly classified national security information.

(2) Such intentional collection of information for foreign counterintelligence purposes may involve, when necessary to acquire the information, the use of --

- (A) overt techniques and name checks;
- (B) records reviews;
- (C) physical and photographic surveillance, under procedures established by the agency head with the approval of the Attorney General;
- (D) covert human sources, under procedures established by the agency head with the approval of the Attorney General;
- (E) covert investigative techniques, under procedures established by the agency head with the approval of the Attorney General;
- (F) electronic surveillance, as defined in Title the Overseas Surveillance Act, and in accordance with the standards and procedures of that Act.

(3) The Attorney General or his delegate shall review at least annually all foreign counterintelligence activities involving the intentional collection of information outside the United States concerning United States persons to determine whether the standards and procedures of this subsection have been met.

NATIONAL FOREIGN INTELLIGENCE ACTIVITIES

Sec. 205(a)(1). National foreign intelligence activities authorized under Title I may be directed at a U.S. person only in accordance with the provisions of this section.

(2) National foreign intelligence activities may involve the collection, maintenance, use, or dissemination of information concerning U.S. persons acquired from publicly available sources under regulations promulgated by the entity directors, provided that

(A) the information is relevant to the mission of the entity which collects, maintains, uses, or disseminates it; and

(B) special care is taken to insure that domestic political or personal information about United States persons is not collected, maintained, used, or disseminated under the mistaken belief that it is relevant.

(3) National foreign intelligence activities may involve the conduct of a limited ninety-day inquiry regarding a United States person being considered as a potential source of assistance in the conduct of national foreign intelligence activities only if --

(A) there is a bona fide expectation that the person will be used as a source of assistance in the conduct of such activities; and

(B) the techniques used in the inquiry are limited to name checks and such interviews with the person and with persons who know him as are necessary to determine the person's fitness for use as a source of assistance in the conduct of specific national foreign intelligence activities.

(4) National foreign intelligence activities may involve the intentional collection of nonpublicly available information about a United States person or organization if the Attorney

General makes a prior written finding that:

(A) the person or organization is an agent of a foreign power;

(B) the person resides abroad and is an officer or employee of a foreign power;

(C) the organization is a foreign power; or

(D) the information being sought is essential to the national defense or the conduct of the foreign affairs of the United States.

(5) National foreign intelligence activities may involve the incidental acquisition of nonpublicly available information about a United States person from collection activities directed against foreign powers, organizations, or persons, provided that the information is maintained, used, and disseminated in accordance with the standards and procedures of Sec. 206.

(6) The Attorney General or his delegate shall review all national foreign intelligence activities involving the collection or incidental acquisition of nonpublicly available information about United States persons at least every ninety days to determine whether such activities satisfy the requirements of this section.

(b)(1). National foreign intelligence activities may involve the placement or recruitment of a covert human source within a United States organization, without the knowledge of the principal executive officer or officers of the organization, only --

(A) for the sole purpose of preparing the covert human source for assignment to a national foreign intelligence activity outside the United States;

(B) for such time as is necessary to accomplish this purpose;

(C) if the director of the entity which handles the source makes a written finding that such action is essential for national foreign intelligence purposes of vital

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importance to the United States;

(D) under procedures approved by the Attorney General or his delegate reasonably designed to prevent the misuse of participation of the covert human source in the activities of the organization and the misuse of any information obtained from such participation; and

(E) if no information about a United States person acquired from the covert human source is disseminated outside the entity which handles the source, unless such information pertains to felonious criminal conduct or a threat of death or serious bodily harm, in which case such information may be disseminated only with the approval of the Attorney General or his delegate.

(2) National foreign intelligence activities may involve the use of a covert human source who is employed by a United States organization, where the activities of the source relate to his employment, only if the principal executive officer or officers of the employing organization are informed of the nature of the activities of the covert human source.

(c)(1) No United States person who is not a regular employee of an entity of the Intelligence Community may be used to assist in the conduct of national foreign intelligence activities unless --

(A) the assistance is completely voluntary;

(B) no pressure that would significantly impair the person's ability to make a free and rational choice has been brought to bear upon the person; and

(C) the person is informed of the nature of the assistance and of any reasonably anticipated adverse consequences such assistance may have for him.

(2) No United States organization which is not a foreign power may be used to assist in the conduct of national foreign intelligence activities unless --

(A) the principal executive officer or officers of the organization voluntarily agree to provide the assistance;

(B) no pressure that would significantly impair the ability of the principal executive officer or officers of the organization to make a free and rational choice has been brought to bear upon them;

(C) the principal executive officer or officers are informed of the nature of the assistance and of any reasonably anticipated adverse consequences such assistance may have for the organization; and

(D) the principal executive officer or officers give assurance that the assistance is not in violation of the charter, constitution, bylaws, or rules and regulations of the organization.

(3) No United States educational or private voluntary or nonprofit organization which assists in the conduct of national foreign intelligence activities may receive any covert financial assistance or support for such activities, direct or indirect, from the Government of the United States.

(4) No United States educational, private voluntary, or nonprofit organization may be used by an entity of the Intelligence Community to assist in the conduct of national foreign intelligence activities unless the entity director makes a prior written finding that the activities to be assisted are necessary to the national defense or the conduct of the foreign affairs of the United States.

(5) No alien lawfully admitted for permanent resident (as defined in section 101(a)(20) of the Immigration and Nationality Act) who has applied for United States citizenship may be recruited as a covert human source by an entity of the Intelligence Community of the United States.

MAINTENANCE, USE, AND DISSEMINATION OF INFORMATION

Sec. 206(a). Information about United States persons acquired, intentionally or incidentally, in the course of national foreign intelligence and foreign counterintelligence activities authorized under Title I may be maintained, used, and disseminated only in accordance with the provisions of this section.

(b)(1) Except as provided in paragraph (2), personally identifiable information about a United States person shall be maintained only if that information is relevant to an authorized national foreign intelligence or foreign counterintelligence activity and is obtained in compliance with this Act.

(2) No personally identifiable information about the political beliefs or associations, or private lives, of United States persons shall be maintained, except such information as is clearly necessary for an authorized national foreign intelligence or foreign counterintelligence activity.

(c)(1) Personally identifiable information about a United States person shall be sealed within seven years, unless such information is evidence of a specific act in violation of law or appears on its face necessary to another authorized national foreign intelligence or foreign counterintelligence activity.

(2) All personally identifiable information about United States persons which has been obtained through the use of techniques not authorized by this Act shall be either sealed or purged as soon as practicable.

(d)(1) Information about a United States person may be used or disseminated only --

(A) for the purpose of assessing the effectiveness or security of the technique by which the information was acquired;

(B) if the person has consented to the use or dissemination of such information;

(C) if the information was obtained from publicly available sources, subject to the provisions of section 205(a)(2);

(D) if the information is not used or disseminated in a form which personally identifies the United States person;

(E) if the identity of the United States person is significant national foreign intelligence, provided that generic terms not identifying United States persons are used wherever possible;

(F) if the information evidences or concerns a possible threat to the physical safety of any person;

(G) if the information is evidence that the United States person may be an agent of a foreign power;

(I) if the information is evidence that the United States person may be a target of intelligence activities of a foreign power; or

(J) if the information is evidence that the United States person is engaged in the unauthorized disclosure of properly classified national security information.

(2) No personally identifiable information about a United States person shall be disseminated outside the entity which acquired the information, except --

(A) to the President and such employees of the Executive Office as he may designate;

(B) to the Attorney General or his delegate and such other employees of the Department of Justice as he may designate;

(C) to the appropriate committees of Congress having jurisdiction over national foreign intelligence activities;

(D) to an appropriate Federal official having authority to make personnel decisions regarding the subject of the information;

(D) to another entity of the Intelligence Community if relevant to an activity of that entity authorized by law,

(F) to an intelligence or law enforcement agency of a foreign government, if relevant to an activity which a similar agency of the United States is authorized by law to carry out;

(G) to any other Federal, State, local, or foreign government officials if necessary to inform such officials of illegal acts within their jurisdictions, provided that the Attorney General or his delegate shall be notified of all such disseminations;

(H) to such other persons, including potential targets, as are necessary to protect life and property from a direct threat of violence, provided that the Attorney General or his delegate shall be notified of all such disseminations.

(3) Records shall be maintained of all disseminations of personally identifiable information about United States persons acquired, intentionally or incidentally, in the course of national foreign intelligence and foreign counterintelligence activities.

(4) No personally identifiable information about a United States person shall be disseminated to the President or any employee of the White House Office, to any Federal official, to any member of the news media, or to any other person for political or any other improper purpose, including the discrediting of any person critical of the President or of an entity of the Intelligence Community of the United States.

(5) The Attorney General or his delegate shall review at least annually all maintenance, use, and dissemination of personally identifiable information about U.S. persons to determine whether the standards and procedures of this section have been met.

GENERAL RESTRICTIONS

Sec. 207(a). The restrictions and procedures of this section apply to all national foreign intelligence and foreign counterintelligence activities authorized under Title I.

(b) National foreign intelligence and foreign counterintelligence activities may be directed at a United States person if the person gives informed written consent to the specific activities, provided that such activities are undertaken under regulations promulgated by the Director with the approval of the Attorney General.

(c) In exigent circumstances, where a written finding by the Attorney General or his delegate, the Director, or the entity Director is required prior to the initiation of a national foreign intelligence or foreign counterintelligence activity, the finding may be made within twenty-four hours after the proposed activity is initiated, provided that if the appropriate official declines to make that finding, any information acquired about a United States person shall be sealed or purged.

(d) No national foreign intelligence or foreign counterintelligence activity conducted within the United States or directed against a United States person shall involve the use of physical force, except in accord with law, or any apparatus or technique contrary to fundamental standards of due process under the Constitution and laws of the United States.

(e) All national foreign intelligence and foreign counterintelligence activities involving contacts, including interviews with or regarding United States persons shall be conducted in a manner so as to minimize any adverse effects on United States persons who have not violated Federal law, such as causing employers or other associates to form an unfavorable opinion of the person, influencing the person to curtail or modify his

advocacy of political ideas or his participation in lawful political, social, religious, educational, or economic activities, or discouraging United States persons from associating with a group for the purpose of petitioning the Government for the redress of grievances.

(f) No entity of the Intelligence Community shall request or otherwise encourage, directly or indirectly, any person, organization, or agency of government to undertake activities or employ techniques which the Intelligence Community is forbidden to undertake or employ by the Constitution or laws of the United States.

(g) No entity of the Intelligence Community may employ a false identification or other "pretext" technique to conceal from a United States person the government affiliation of an employee or contractor of the Intelligence Community, except under regulations promulgated by the Director with the approval of the Attorney General.

(h) No otherwise privileged communication shall lose its privileged character as a consequence of this Act; and the Attorney General shall promulgate regulations to protect privileged communications against national foreign intelligence and foreign counterintelligence activities.

(i)(1) Except as otherwise expressly authorized in this Act, no entity of the Intelligence Community shall --

(A) provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or to State or local police organizations of the United States; and

(B) participate in or fund any law enforcement activity within the United States.

(2) With the prior written approval of the Attorney General or his delegate, an entity of the Intelligence Community may provide specialized equipment or technical knowledge for use by

a Federal law enforcement agency, other than the Law Enforcement Assistance Administration, provided that the Attorney General shall publish an annual report describing the nature of the equipment or knowledge provided to such law enforcement agency.

(3) In order to provide appropriate security for the installations and grounds of the entities of the Intelligence Community, the entity Directors may appoint and assign security officers for duty in connection with the policing of such installations and grounds. Security officers shall, at such installations and grounds, have the same powers as sheriffs and constables for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the entity Director for such installations and grounds. The jurisdiction and policing powers of such security officers shall not extend to the service of civil process.

(4) Such employees of the entities of the Intelligence Community as may be designated by the entity Directors shall be authorized to carry firearms, within the United States, for courier protection of documents of the entities of the Intelligence Community and for the protection of the entity Directors, such other officials of the entities of the Intelligence Community as the entity Directors may designate, and defectors from foreign countries.

(5) The entities of the Intelligence Community of the United States may conduct limited physical security checks of persons who are or will be within, on the grounds, or in the immediate vicinity of the facilities of an entity of the Intelligence Community, provided that limited physical security checks may involve only the use of --

(A) name checks; and

(B) physical surveillance while the United States person is within, on the grounds, of or in the immediate vicinity of the facilities of an entity of the Intelligence Community.

(6) The entities of the Intelligence Community may investigate a person who is, or may be, involved in activities which pose a clear threat to the physical safety of the facilities or personnel of an entity of the Intelligence Community of the United States, provided that no entity of the Intelligence Community, other than the Federal Bureau of Investigation, shall conduct such investigations within the United States.

(7) An agency of the Intelligence Community may assist the Federal Bureau of Investigation in the conduct of domestic security activities outside the United States, provided that such activities are carried out in accordance with the standards and procedures for domestic security activities of the Federal Bureau of Investigation.

PROHIBITION OF MILITARY SURVEILLANCE

Sec. 209(a). Except as otherwise provided in this Act with respect to entities of the Intelligence Community of the United States, the Department of Defense may not engage in any intelligence activities or law enforcement activities directed at a United States person who is not a member of the Armed Forces, a civilian employee of the Department of Defense, an officer or employee of a contractor of the Department of Defense, or a prospective employee of such department or contractor of such department unless --

(1) such activities take place within the boundaries of facilities and installations of the Department of Defense to the extent necessary to protect the security of such installations and facilities and the property thereon and insure compliance with rules and regulations applicable to such facilities and installations;

(2) such activities involve the conduct of investigations of persons reasonably suspected of being involved in a civil disorder after the President has ordered members of the Armed Forces to the site of such disorder, but only to the extent necessary to fulfill the military mission and to the extent that the information cannot be obtained from the Department of Justice or other law enforcement agencies; or

(3) such activities involve the collection of information about geography, logistical matters, and the identity of local government officials of any area where members of the Armed Forces are likely to be assigned to duty in connection with a civil disorder, but only to the extent that such information is necessary to the positioning, support, and effective use of members of the Armed Forces in such area.

(b) An investigation of a person suspected of being involved in a civil disorder under subsection (a)(2) may involve, when necessary to obtain information for the investi-

gation, the use of --

- (A) overt techniques and name checks;
- (B) physical and photographic surveillance; and
- (C) record reviews.

ASSISTANT ATTORNEY GENERAL FOR INTELLIGENCE OVERSIGHT

Sec. 210(a)(1). There is established within the Department of Justice the Office of Intelligence Oversight which shall be headed by an Assistant Attorney General who shall be appointed by the President, with the advice and consent of the Senate.

(2) The Assistant Attorney General for the Office of Intelligence Oversight may serve as the Attorney General's delegate for the performance of duties assigned to the Attorney General or his delegate under this Act.

(3) The Director of National Intelligence and the heads of the entities of the Intelligence Community shall make available to the Assistant Attorney General for the Office of Intelligence Oversight such information and assistance as he finds necessary to carry out his functions.

(b) The Attorney General or his delegate shall be responsible for ensuring that all national foreign intelligence and foreign counterintelligence activities are in compliance with the Constitution and laws of the United States. In discharging this responsibility, the Attorney General or his delegate shall --

(1) Approve or disapprove all regulations proposed by the Director of National Intelligence or the heads of the entities of the Intelligence Community to implement any requirement of this Act;

(2) Upon the request of any entity of the Intelligence Community, provide interpretations of any law or regulation related to national foreign intelligence and foreign counterintelligence activities, including proposed activities.

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8 NOV 1977

MEMORANDUM FOR: General Counsel

FROM: Robert W. Gambino
Director of Security

SUBJECT: Review of "Intelligence Activities and Individual Rights" Draft

1. This Office has reviewed, in the limited time afforded it, the Draft entitled "Intelligence Activities and Individual Rights." There are certain concerns and questions which have become evident from this review and these are detailed in the commentaries which are provided in the subsequent paragraphs.

a. Page 14, (c)(5) No alien lawfully admitted for permanent resident (as defined in section 101(a)(20) of the Immigration and Nationality Act) who has applied for United States citizenship may be recruited as a covert human source by an entity of the Intelligence Community of the United States.

Comment: While this Office fully understands the intent of (5), there are definite questions presented regarding its applicability to necessary defector handling, defector debriefings, etc. This Office believes that these questions must be clarified.

b. Page 15, (c)(1) Personally identifiable information about a United States person shall be sealed within seven years, unless such information is evidence of a specific act in violation of law or appears on its face necessary to another authorized national foreign intelligence or foreign counterintelligence activity.

Comment: This Office questions the prudence of "sealing" such information as mentioned in this section and elsewhere, and wonders why "seven years" is the chosen period of time. Elsewhere it is stated that material can be unsealed for compelling reasons. This Office desires a precise defining of those "compelling reasons."

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c. Page 15, section 206(d)(1) Information about a United States person may be used or disseminated (followed by nine conditions).

Comment: A literal interpretation of provisions (A) through (J) would seriously limit our use of the National Agency check as an investigative tool. It would appear that this Office could conduct no checks without permission of the person concerned. This would eliminate our support to DDO in the processing of Operational Approvals. The entire section appears to be in contradiction with other provisions of the draft, and without clarification is confusing to the point that this Office can only suggest a complete revision to specify legal intent.

d. Page 19, section 207(g) No entity of the Intelligence Community may employ a false identification or other "pretext" technique to conceal from a United States person the government affiliation of an employee or contractor of the Intelligence Community, except under regulations promulgated by the Director with the approval of the Attorney General.

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of the Intelligence Community. This Office wishes to note that portion which states that these arrangements can be approved under regulations promulgated by the Director with the approval of the Attorney General and to strongly urge that immediate action be taken to effect such approval.

2. This Office also reserves full acceptance of all other portions and sections because of the limited time available for review. It is the position here that there could be some very critical, hidden problems in this draft.

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for Robert W. Gambino.

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